

General Information Letter: Individual from whom Illinois taxes were withheld in error must file an Illinois income tax return to obtain a refund from Illinois.

July 25, 2002

Dear:

Your letter received by the Department July 19, 2002 was forwarded to Legal Services for reply. The nature of your letter and the information provided require that the issuance of a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on the Department's web site at [www.iltax.com](http://www.iltax.com).

Your letter states as follows:

I am sending this letter in regards to your refusal to refund all of my wages that were incorrectly withheld by my former employer. Document # XXXXXX-XXX-XX-XXX. I have attached a document from his attorney that states that all my operations in selling his goods were done outside the state of Illinois.

I am sending this in lieu of his refusal to do so for me. I hope you will reconsider your withholding of the balance of the 1703.00 minus the \$149.00 that was already refunded to me. If you have any questions, please feel free to call me anytime at XXXXXX-XXXX.

I would also hope that you would take this upon yourself to personally correct this situation for the other employees that he is forcing to withhold IL state income taxes despite living and having residence in another state.

## **RULING**

The first paragraph of the attorney's letter accompanying your correspondence reads in part:

"The base of operations from which the services are directed is my client's corporate offices in Illinois. ... In addition, Mr. Zs business cards reflect an Illinois address *and Mr. Z comes to Illinois for work integral to his service.*" (Emphasis added)

As explained below, the information you have provided does not support the conclusion that Illinois income taxes have been improperly withheld from your wages. If you wish that the Department reconsider your account, please follow the instructions on the ITR-76 Taxpayer notification, previously issued to you on May 27, 2002.

Department of Revenue Regulations Section 100.7010(a)(1) states the general rule that withholding is required with respect to "compensation paid in this State." The section defines "compensation paid in this State" as follows:

Compensation is paid in this State if:

A) The individual's service is localized in this State because it is performed entirely within this State;

B) The individual's service is localized in this State although it is performed both within and without this State, because the service performed without this State is incidental to the individual's service performed within this State; or

C) The individual's service is not localized in any state but some of the service is performed within this State and either; the base of operations, or if there is not a base of operations, the place from which the service is directed or controlled is within this State, or the base of operations and the state from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

The documentation provided the Department pertaining to your account includes (1) your employer's actual withholding of Illinois income tax, and (2) a letter from your employer's attorney indicating that such withholding was proper because you perform integral services in Illinois. Without documentation to the contrary, the Department cannot conclude that Illinois income tax was improperly withheld from your wages.

As stated above, a GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have additional questions regarding this GIL, you may contact me at (217) 782-7055.

Sincerely,

Brian L. Stocker  
Associate Counsel (Income Tax)